

REMARKS

This Amendment is submitted in reply to the non-final Office Action dated February 24, 2010. A petition for a three month extension of time is submitted herewith. The Director is authorized to charge \$1110.00 for the three month extension of time, and any additional fees that may be required, or to credit any overpayment to Deposit Account No: 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3712036-737 on the account statement.

Claims 9, 11-14, 16, 23-24 and 27 are pending in this application. Claims 1-8 and 19-20 were previously withdrawn from consideration. Claims 10, 15, 17-18, 21-22 and 25-26 were previously canceled without prejudice or disclaimer. In the Office Action, Claim 9 has been objected to; Claims 9, 11-14, 16 and 27 are rejected under 35 U.S.C. §112; Claims 9, 11-12, 14, 16 and 23-24 are rejected under 35 U.S.C. §102; and Claims 9, 11-14, 16, 23-24 and 27 are rejected under 35 U.S.C. §103. In response, Claims 9 and 14 have been amended, and Claims 23-24 have been canceled. The amendments do not add new matter. In view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claim 9 has been objected to. In response, Applicants respectfully submit that there is not an extra "the" after the phrase "improvement in" with respect to "the at least one skin characteristic." Rather, the "at least on skin characteristic" has an antecedent basis in the preamble of the claim, which recites what the at least on skin characteristic is selected from. As a result, Applicants respectfully submit that Claim 9 is clear with respect to the phrase "an active ingredient to a human or pet animal requiring improvement in the at least one skin characteristic."

In the Office Action, Claims 9, 11-14, 16 and 27 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. More specifically, the Patent Office asserts that the term "elderly" in Claim 9 is not supported by the originally filed specification. In response, Applicants have amended Claim 9 by removing the phrase "in the elderly." Claim 9 has further been amended for clarification purposes. Based on at least these noted reasons, Applicants believe that the pending claims fully comply with 35 U.S.C. §112, first

paragraph. Accordingly, Applicants respectfully request that the rejection of Claims 9, 11-14, 16 and 27 under 35 U.S.C. §112, first paragraph, be withdrawn.

In the Office Action, Claims 9, 11-12, 14, 16 and 23-24 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,159,475 to Olguin ("*Olguin*"). Claims 23-24 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,849,786 to Bidel ("*Bidel*"). Applicants respectfully traverse the rejections for at least the reasons set forth below.

Claims 23-24 have been canceled thereby render the rejection of these claims moot.

Independent Claim 9 recites, in part, orally administering a composition comprising a therapeutically-effective amount of at least one flavanone compound as an active ingredient to a human or pet animal requiring improvement in the at least one skin characteristic. By orally administering a therapeutically effective amount of the claimed flavanone compounds as an active ingredient to an individual requiring improvement in specific skin characteristics or suffering from skin, hair or coat disorders, the claimed methods can be used to improve specific skin characteristics and treat the skin, hair or coat disorders of the individual.

Anticipation is a factual determination that "...requires the presence in a single prior art disclosure of each and every element of a claimed invention." *Lewmar Marine, Inc. v. Barient, Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Moreover, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). In contrast, the cited reference fail to disclose or suggest each and every element of independent Claims 9 and 23.

Olguin fail to disclose the step of orally administering a composition comprising a therapeutically-effective amount of at least one flavanone compound as an active ingredient to a human or pet animal requiring improvement in the at least one skin characteristic as required by independent Claim 9. *Olguin* discloses topical hair growth formulation. See *Olguin*, Abstract, and column 1, lines 29-36 and 66-67. The two basic main ingredients of the hair growth formulation are castor oil and a special lemon extract. The special lemon extract is made from fresh lemon peel. The peel, including the bioflavonoids membrane, is blended with purified water until it is liquidified. Then the mixture is filtered through a sanitized cloth. At no place does *Olguin* disclose that his hair growth formulation is to be orally administered.

For at least the reasons discussed above, Applicants respectfully submit that Claim 9, along with any of the claims that depend from Claim 9, is novel, nonobvious and distinguishable from the cited reference. Accordingly, Applicants respectfully request that the rejection of the pending claims under 35 U.S.C. §102(b) be withdrawn.

In the Office Action, Claims 9, 11-14, 16, 23-24 and 27 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Olguin* in view of EP 0774749 to Cho et al. ("*Cho*"). Applicants respectfully traverse the rejection for at least the reasons set forth below.

Olguin and *Cho* alone or in combination fail to disclose the step of orally administering a composition comprising a therapeutically-effective amount of at least one flavanone compound as an active ingredient to a human or pet animal requiring improvement in the at least one skin characteristic as required by independent Claim 9. As a result, *Olguin* and *Cho* are deficient with respect to the claimed invention for at least this reason.

Applicants also respectfully submit that skilled artisan would have no reason to combine the cited references to arrive at the claimed invention because the references teach away from the claimed invention. References must be considered as a whole and those portions teaching against or away from each other and/or the claimed invention must be considered. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve Inc.*, 796 F.2d 443 (Fed. Cir. 1986). "A prior art reference may be considered to teach away when a person of ordinary skill, upon reading the reference would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the Applicant." *Monarch Knitting Machinery Corp. v. Fukuhara Industrial Trading Co., Ltd.*, 139 F.3d 1009 (Fed. Cir. 1998), quoting, *In re Gurley*, 27 F.3d 551 (Fed. Cir. 1994).

As previously discussed, *Olguin* discloses topical hair growth formulation. Similarly, *Cho* discloses cosmetic compositions containing combinations of flavanones:eriodictyol and/or taxifolin combined with taxifolin and/or hesperetin. The cosmetic composition is applied topically to the skin. See *Cho*, page 3, lines 6-35. *Cho* fails to disclose or suggest disclose or suggest anywhere that his cosmetic compositions are to be orally administered.

As the compositions of *Olguin* and *Cho* are to be applied topically, they completely teach away from the oral administration of the claimed invention. The skilled artisan understands that such topical applications are effective on the epidermis of the user but do not generally cross the

barriers of the skin. There is absolutely no reasonable expectation of success that the compositions of *Olguin* and *Cho* would work through an orally administered systemic route. Moreover, the claimed invention follows a complex metabolic route that can act in the dermis layer (i.e., a different tissue than the epidermis) when administered orally. Consequently, the skilled artisan would not have arrived at the claimed invention by using the cited references.

What the Patent Office has done is to rely on hindsight reconstruction of the claimed invention. Applicants respectfully submit that it is only with a hindsight reconstruction of Applicants' claimed invention that the Patent Office is able to even attempt to piece together the teachings of the prior art so that the claimed invention is allegedly rendered obvious. Instead, the claims must be viewed as a whole as defined by the claimed invention and not dissected into discrete elements to be analyzed in isolation. *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983); *In re Ochiai*, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995). One should not use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d at 1075. (Fed. Cir. 1988).

For at least the reasons discussed above, *Olguin* and *Cho* fail to teach or suggest every element of independent Claim 9, along with any of the claims that depend from Claim 9. Moreover, the combination of *Olguin* and *Cho* is improper as the cited references teach away from the claimed invention. Accordingly, Applicants respectfully request that the rejection of the pending claims under 35 U.S.C. §103(a) be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly request an early allowance of the same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

K&L GATES LLP

BY

Robert M. Barrett
Reg. No. 30,142
Customer No. 29157
Phone No. 312-807-4204

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